STATE OF MICHIGAN

IN THE SUPREME COURT

JEFFREY SOTELO, SUSAN SOTELO, WALTER J. VANDER WALL, individually and as Trustee and PHYLLIS A. VANDER WALL, individually and as Trustee,

Plaintiffs/Appellants,

-vs-

TOWNSHIP OF GRANT,

Defendant/Appellee.

Supreme Court No. 123430

Court of Appeals No. 238690

Newaygo Circuit Court

No. 00-18133-AW-M

123430

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BRIEF IN OPPOSITION TO THE TOWNSHIP OF GRANT'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF BASIS OF JURISIDICTION & GROUNDS FOR APPEAL

Final Judgment in this case was entered on December 11, 2001. Appellant's Claim of Appeal was filed on December 21, 2001, and was, therefore, timely under MCR 7.204(A). The basis of jurisdiction in the Court of Appeals was pursuant to MCR 7.204(A).

On February 21, 2003, the Court of Appeals unanimously reversed the Trial Court's decision, and remanded the matter back to the Trial Court for entry of judgment in favor of the Plaintiffs. On March 12, 2003, the Township of Grant filed an Application for Leave to Appeal to the Michigan Supreme Court.

The Township basis its Application for Leave to Appeal on MCR 7.302(B)(2) and (3). The Township asserts that the Court of Appeals decision, if allowed to stand, "will significantly alter the state's jurisprudence in major areas of municipal law and real property law." However, this statement is fundamentally flawed. The Court of Appeals did not alter the Land Division Act in any way – it simply interpreted the clear language of the Land Division Act and correctly ruled that the Trial Court's Opinion was wrong and contrary to the Land Division Act. In short, the Court of Appeals correctly reigned in the Trial Court, which sought to alter the Land Division Act by reading into it provisions that do not exist, but continue to be pursued by the Township without any statutory or case law support. As will be seen below, the only support for the Township's position – and the only support cited by the Trial Court – is an outdated Attorney General Opinion that is no longer applicable due to amendments to the Land Division Act. The Court of Appeals correctly brushed aside the Attorney General Opinion by stating "we are not bound by the Opinion of the Attorney General" and "we do not find it persuasive" because "the opinion cites no authority for its conclusion" and "we find no statutory support for that conclusion."

STATEMENT OF QUESTIONS INVOLVED

I. DID THE COURT OF APPEALS PROPERLY INTERPRET THE CLEAR LANGUAGE OF THE LAND DIVISION ACT?

II. DID THE COURT OF APPEALS USE THE APPROPRIATE INTERPRETATIVE STANDARDS IN READING THE LAND DIVISION ACT.

III. DID THE COURT OF APPEALS PROPERLY DETERMINE THAT THE MICHIGAN ATTORNEY GENERAL'S OPINION 5929, WHICH WAS ISSUED IN 1981 UNDER THE REPEALED SUBDIVISION CONTROL ACT AND BEFORE THE SUBDIVISION CONTROL ACT WAS SUBSTANTIALLY CHANGED, HAD NO PERSUASIVE VALUE.

COUNTER-STATEMENT OF FACTS

This case involves interpretation of the Land Division Act ("LDA"), MCL 560.101, et seq. At question are three divisions of a parcel (resulting in four separate parcels) which Plaintiff ("Sotelo") believes are and which Defendant Grant Township ("Township") believes are not legal under the LDA.

A. The Sotelo parcel.

Jeffrey and Susan Sotelo originally owned a 2.35 acre parcel of property in Grant Township. On July 15, 1999, Sotelo acquired an additional 3.25 acres of property from the neighbor to the immediate south, Robert Filut. This 3.25 acres was added to the 2.35 acres under the provisions of Section 102 of the LDA, MCL 560.102(d). The Township originally – and without a basis - refused to recognize this transaction. It also was part of the underlying lawsuit (Count I of the original Complaint), but is not involved in the appeal. After Sotelo filed a Motion for Summary Disposition on this issue, the Township conceded and the two parcels were combined into the "Sotelo parcel".

B. The Vander Wall parcels.

Before transferring 2.35 acres to the Sotelos, Robert Filut's parcel was 7.63 acres in total. After the transaction with the Sotelos, Filut made three divisions of his remaining 5.6 acres (creating four total parcels) and transferred those parcels to two trusts owned by Walter and Phyllis Vander Wall. The Township also refused to acknowledge these divisions. As a consequence, the Township was challenged on their unlawful refusal to acknowledge the divisions in Count II of the Complaint in the Trial Court. Again, on Motion for Summary Disposition, the Township finally acknowledged that it was and Summary Disposition was

granted as to those parcels. These divisions by Filut are also not part of the appeal, but must be considered in the context of the Township's actions.

C. The Sotelo divisions.

On August 10, 1999, the Sotelos made three divisions of the Sotelo parcel (four total parcels). The Township again refused to acknowledge these divisions. The property owners appealed through the Township's administrative process. By resolution dated July 27, 2000, the Township denied the appeal "concluding that the divisions exceeded the number allowed under the LDA." (Trial Court Opinion, Page 1).

After being denied through the Township's appeal process in regards to all transactions, the Plaintiffs took their case to the Newaygo County Circuit Court. As indicated above, Plaintiffs prevailed after filing Motions for Summary Judgments on Counts I and II; however, the questioned transactions in Count III, (and the transactions constituting the sole basis of the Appeal) were submitted by Summary Judgment to the Circuit Court. Oral Argument was held on September 18, 2001, and the Court issued its Opinion on October 30, 2001. Final Judgment on the Court's Opinion was issued on December 11, 2001.

The Trial Court erroneously determined that the Sotelo divisions violated the LDA. The Court relied principally upon an outdated Opinion from Michigan's Attorney General rendered on June 25, 1981, which interpreted the since-repealed Subdivision Control Act (1967 PA 288). OAG 1981, #5929 (June 25, 1981).

The Township's contention has always been that since part of the Sotelo parcel recently belonged to Robert Filut, and since Mr. Filut had created four parcels out of the property which he retained, that when Sotelo attempted to split their parcel, that there were no splits available for the Sotelo property. All parties agree that the original Sotelo property (2.35

acres) could be divided into four parcels under the provisions of the LDA. Both sides also agree that, pursuant to the Township zoning ordinances, that before the Sotelos acquired part of the Filut parcel, they could only have divided their property into two parcels because the Township's zoning ordinance requires each parcel to be at least one acre in size. The Township disagrees with Sotelo's position that once they acquired part of the Filut property, combined it with their own creating a parcel over four acres in size, that they were entitled then to create four separate parcels under the LDA, since each parcel would then comply with the LDA and the Township's zoning ordinance requiring a minimum 1-acre lot size. As such, the parties do agree that the Sotelo parcel, after acquiring property from the Filuts would satisfy the Township zoning ordinance as far as minimum lot size. The sole question for the Trial Court, and on appeal to the Court of Appeals, was whether the three splits of the Sotelo property were then barred by the provisions of the LDA.

ARGUMENTS

STANDARD OF REVIEW

Interpretation of a statute is a question of law In Re MCI Telecommunications Complaint, 460 Mich 396, 596 NW2d 164 (1999). This matter was decided at the Trial Court level by Summary Disposition which also are reviewed de novo. Omne Financial, Inc v Schacks, Inc, 460 Mich 305, 596 NW2d 591 (1999); Oade v Jackson Nat Life Ins. Co of Michigan, 465 Mich 244, 633 NW2d 126 (2001).

I. THE COURT OF APPEALS PROPERLY INTERPRETED THE CLEAR LANGUAGE OF THE LAND DIVISION ACT.

This is a case that is much simpler than the Township makes it appear to be – and one where the Court of Appeals properly recognized the limits of the language of the LDA. While the Trial Court concluded that the Sotelo divisions were not legal, it did not identify any part of

the LDA which stated so, and the Court of Appeals properly found that the Sotelo divisions were legal. The appropriate standard for interpreting a statute is to ascertain the clear intent of the Legislature. A court may not speculate "about the Legislatures' intent beyond the words employed in the statute. MCI, supra at 415. Courts may not try to divine an unstated, even if probable, legislative intent. People v McIntire, 461 Mich 147, 153, 599 NW2d 102 (1999)

The Trial Court did not find any such clarity in the LDA. Plaintiffs have always believed that had the Township and Trial Court read the LDA appropriately, the splits would have been allowed. The Court of Appeals properly recognized that the Trial Court's Opinion is conspicuously flawed because it does not cite any language of the LDA in support of its decision. Rather, the sole basis for the Trial Court's decision is it reliance on Michigan Attorney General Opinion #5929. The inapplicability of OAG 5929 is discussed below. The point is that, once reference to the Attorney General Opinion is removed, the Trial Court can point to no statutory language which supports its decision – a fact that the Court of Appeals appropriately seized upon.

However, it should be noted that the Trial Court Opinion did reflect some accurate statements of the LDA – which were appropriately left undisturbed by the Court of Appeals. Specifically:

1. The Trial Court recognized that after Summary Judgment Motions were filed that "the transfer of a portion of the Filut parcel to the adjacent Sotelo parcel and the divisions made from the reconfigured Filut parcel were consistent with Michigan law and the Township's ordinances." (Trial Court Opinion Page 1, Paragraph 5).

2. Under Section 108 of the LDA, both the original Sotelo and the original Filut parcels could legally be divided into four parcels (Trial Court Opinion Page 2, Paragraph 1).

3. The transfer of the northerly portion of the Filut parcel to the Sotelo parcel did not "count against one of the potential divisions available ... under Section 108 of the LDA." (Trial Court Opinion Page 2, Paragraph 3).

In its Opinion, the Trial Court stated "The parties' lawyers correctly assessed the LDA as not being a model of clarity on this issue" – a point also made by the Court of Appeals. (Trial Court Opinion Page 3, Paragraph 1, Slip. Op. p. 3). Despite making this statement, the Trial Court never identified any section of the LDA upon which it could base its opinion. The reason that the Trial Court was unable to list any statutory language is that there simply is none which justifies the Trial Court's Opinion. The Trial Court had difficulty in following the Township's rationale. As a consequence, the Opinion is entirely devoid of any statutory justification for the decision, and the decision is based solely on OAG 5929.

As the Court of Appeals recognized, it is important to look at the Township's underlying arguments and realize why the Trial Court could not utilize those rationales as a basis for its Opinion. The Township's position is essentially one of misplaced reliance on MCLA 560.109(2); which does not restrict transfer of division rights.

> "The right to make divisions exempt from the platting requirements of this act under section 108 and this section can be transferred, but only from a parent parcel or parent tract to a parcel created from that parent parcel or parent tract. A proprietor transferring the right to make a division pursuant to this subsection shall within 45 days give written notice of the transfer to the assessor of the city or township where the property is located on the form prescribed by the state tax commission under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a. The state tax commission shall revise the form to include substantially the following questions in the mandatory information portion of the form:
>
> (a) "Did the parent parcel or parent tract have any unallocated divisions under the land division act, 1967 PA 288, MCL 560.101 to 560.293? If so, how many?"

(b) "Were any unallocated divisions transferred to the newly created parcel? If so, how many?

MCLA 560.109(2)(a)(b)

It must be kept in mind that transfer of division rights is an affirmative act. As the Court can see both from the language of the statute as well as the form, this subsection has no application to the facts at bar. Sotelos are not transferring any division rights. The opposite is occurring -- they are retaining their division rights. They have acquired additional land, but this subsection does not address the acquisition of land -- only the affirmative act of transfer of division rights from one parcel to another. Indeed, the deeds involved in this matter expressly state that no division rights are being transferred.

The Court of Appeals correctly found that the Township's analysis is fatally flawed. The Township believes that the LDA mandates that all divisions occur within the boundaries of a parent parcel or parent tract. Yet neither the Township nor the Trial Court cites any language from the LDA which supports that conclusion, and the Court of Appeals correctly noted that "the township points to nothing in the statute to support this argument and we can find no support for it there either." (Slip. Op. p. 3).[1] In addition, the Court of Appeals correctly noted that it would not "read into the statute prohibitions on alienation not clearly supported by its language." (Slip. Op. p. 3).

Importantly, the LDA does specify that land can be transferred from one parcel to an adjoining parcel without implicating the LDA at all:

"(d) "Division means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs,

[1] If the LDA does not directly address the issue, the Court should not intervene to expand on the legislative proclamation. Empire Iron Min Partnership v Orhanen, 211 Mich App 130 at 135, 535 NW2d 228 (1995); Feld v Robert & Charles Beauty Salon, 435 Mich 352 at 366, 459 NW2d 279 (1990). It is not the Court's role to legislate or even correct errors of the legislative branch of government. Dedes v South Lyon Community Schools, 199 Mich App 385 at 393, 502 NW2d 720 (1993).

executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent and that satisfies the requirements of sections 108 and 109. Division does not include a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance."

MCL 560.102 (d)

"(f) "Subdivide" or "subdivision" means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that is not exempted from the platting requirements of this act by sections 108 and 109. "Subdivide" or "subdivision" does not include a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel confirms to the requirements of this act or the requirements of an applicable local ordinance."

MCL 560.102(f)

It is important to note that the Legislature imposed only one qualifying factor on a "resulting parcel" when property is transferred from one adjoining parcel to an adjoining parcel. The Sotelo parcel is such a resulting parcel. The only restriction on the resulting parcel was "... any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this Act or the requirements of an applicable local ordinance." MCL 560, 102 (d). The Legislature did not say that it shall not be dividable or subdividable. It only said that it shall not be considered a building site. Likewise, it did not say that the resulting parcel would have any restrictions in its dividability or subdividability. The parties agreed, and a Court Order was issued in this matter which established that the

transfer from Filut to Sotelo was not a division of the Filut property and was legal. That decision is law of this case, has not been appealed, and is also accurate under the LDA. Thereafter, the property became part of the Sotelo property.

It is clear that there is no clear language in the LDA prohibiting the Sotelo divisions. As a consequence, the Court of Appeals correctly found that the Sotelo's requested divisions are legal, and should have been approved by the Township from the beginning.[2]

II. THE COURT OF APPEALS USED THE APPROPRIATE INTERPRETATIVE STANDARDS IN READING THE LAND DIVISION ACT.

The LDA, and its predecessor, the Subdivision Control Act, are in derogation of common law which allowed a landowner to do with their property as they desired.[3] Sotelos are not challenging the right of the State to enact a statute restricting common law rights for the welfare of the community in the context of the LDA. But where a statute is in derogation of common law, that statute must be strictly construed and narrowly construed in favor of the property owner. Nelson v Grays, 209 Mich App 661 at 606, 531 NW2d 826 (1995); In Re Schnell, 214 Mich App 304 at 310, 543 NW2d 11 (1995); Steward v Poole, 196 Mich App 25 at 29, 492 NW2d 475 (1992); and Bowie v Coloma School Bd, 58 Mich

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[2] The Township argues that its Planning Commission's decision should be accorded due deference. The argument is misplaced for three reasons. First, all parties agree that the interpretation of the LDA is a legal interpretation and is to be reviewed de novo. Second, the Township Planning Commission has already been reversed by the Trial Court on summary disposition on two counts. Finally, the cases cited by the Township deal with administrative expertise and "fact finding". Neither is applicable here. This case deals solely with the interpretation of a statutory enactment - - the Land Division Act, for which no deference is due.

[3] The Township and the Michigan Attorney General spend some time arguing that the Court of Appeals erroneously found that the "the LDA is in derogation of the common law right to freely alienate property and, consequently, it is to be strictly and narrowly construed." (Slip. Op. p. 3). While criticizing the Court of Appeals for failing to cite a case for that proposition, neither the Township or the Attorney General cite any case that the LDA is not in derogation of the common law. However, it wasn't until 1967 that the Subdivision Control Act ("SCA") was passed, which was the predecessor of the LDA. The SCA itself replaced the Plat Act, formerly MCL 560.1 et seq., which dealt with the preparation and approval of plats. Zoning was not even sanctioned until 1927 when the United States Supreme Court first considered the constitutionality of zoning ordinances. Village of Euclid v Amber Realty Co, 272 U.S. 365 (1926). The Court of Appeals simply did not need to cite any authority for the proposition that the LDA is in derogation of the common law since the proposition is self-evident, nor can the Township point to any law to the contrary of that principle.

App 233 at 241, 227 NW2d 298 (1975). The Trial Court was reminded of that in oral argument. Yet, the Trial Court omitted any reference to this controlling interpreting principle in its opinion, while the Court of Appeals found that principle important in failing to read into the LDA a provision which does not exist.

The Township would claim that a strict reading of the statute creates bizarre results. In essence, the Township wants this Court to act as a legislative body and correct what they perceive as imperfections in the LDA. Those are policy discussions which the Court of Appeals properly left untouched, and to which this Court should not apply itself or attempt to legislate. Brandon Charter Township v Tippett, 241 Mich App 417 at 423, 616 NW 2d 243 (2000). Indeed the very Attorney General's Opinion on which the Township relies (OAG 5929), pointed out the inconsistent or illogical aspects of the original Subdivision Control Act. In the second to last paragraph of its Opinion, the Attorney General suggested that the Legislature amend the Act to arrive at a more logical result. The Legislature did eventually act and liberalized the Subdivision Control Act to remove transfers between parcels from being in any way controlled. Could the Legislature have acted in another way as suggested by the Township? Obviously, it could. But, the relevant fact is that it did not.

The Township goes on to suggest that, since the Legislature did not expressly deal with the issue, that it must have wanted to resolve the issue in the way the Township now deems appropriate:

> "The amendment did not deal with matter at issue in this case . . . whether the transfer of land from one parent parcel to another would cause the boundary lines of the original parent parcels to be "reset" for purposes of the number of land divisions allowed within the area or "footprint" of each original parent parcel. Although the Legislature could have expressly dealt with this issue in the 1990 amendment, it did not. The legislative amendment never expressly mentions the impact of such land

> transfers between parcels on total land division rights (or the ability to utilize them), nor does the amendment indicate that such land transfers can alter the original boundaries of a parent parcel." (Township's Brief, p. 18).

The Township's argument misses the mark in a couple of very important ways. First, the Legislature did directly deal with the issue - - by removing transfers of land between adjacent parcels from any regulation. Secondly, and more importantly, the Township attempts to change the rules for construction of a statute which restricts common law rights. A narrow or strict construction is required of such statutes. The Township attempts to shift the construction of a statute to say that it should be construed in favor of the Township and against a property owner's common law rights. The Court of Appeals wisely held that the Township's logic is 180° from that which should be utilized. Significantly, the Township correctly acknowledges that the Legislature could have expressly dealt with the issue in the statute and directed a result that the Township now seeks. However, the Legislature did not. Therefore, the absence of the Legislature expressly directing itself to this issue means that the taxpayer's rights to divide are not affected. The decision of the Court of Appeals to disregard the Township's argument was correct because the result is mandated whether the Legislature failed to act by omission or by intention.

The impact of this principle is compelling in this case -- especially when it is realized that the Trial Court enunciated no language in the LDA which directly justified its decision in this matter. The Court of Appeals properly seized upon this point, and correctly refused to broaden the LDA with language not contained within the LDA itself. These interpretive principles had a compelling application in this case because the Township, the Trial Court, and the Court of Appeals point out that the LDA is not "a model of clarity" on the issue involved in this case.

Once the Trial Court concluded that the LDA was not clear on this issue, it was compelled to resolve this matter in favor of Sotelo. The Court of Appeals, on the other hand, correctly applied the proper legal standard, and ruled for Sotelo. In other words, absent clarity from the Legislature that the divisions were illegal, the Trial Court was obliged to construe the statute in favor of the property owner. No other result was possible once the lack of clarity was acknowledged, and the Court of Appeals properly remedied the wrong that was done to Sotelo.

III. THE COURT OF APPEALS PROPERLY DETERMINED THAT THE MICHIGAN ATTORNEY GENERAL'S OPINION 5929, WHICH WAS ISSUED IN 1981 UNDER THE REPEALED SUBDIVISION CONTROL ACT AND BEFORE THE SUBDIVISION CONTROL ACT WAS SUBSTANTIALLY CHANGED, HAD NO PERSUASIVE VALUE.

In essence, the Trial Court erroneously relied on OAG 5929 for its justification in determining Sotelo's divisions to be illegal. This reliance was misplaced because OAG 5929 was issued in 1981 prior to a significant change in the Subdivision Control Act of 1967. Additionally, the Subdivision Control Act of 1967 has been repealed and replaced with the LDA. The Trial Court's Opinion indicates it did not appreciate the significance of the changes that have occurred since 1981 – a change which the Court of Appeals correctly picked up on.

The Subdivision Control Act was significantly revised in 1990.[4] Prior to the 1990 amendment of the Subdivision Control Act, property transfers between two or more

[4] While asserting that the new Land Division Act ("LDA") was appropriately interpreted, the Township represents that "for purposes of the issues contained in this Appeal, the Township respectfully asserts that there were no substantive changes between the old Subdivision Control Act and the new LDA." This is incorrect. While it is true that there were no substantive changes at the time the new LDA was enacted, there were substantive changes in 1990. The significance of this fact is that the Subdivision Control Act was changed after the issuance of OAG 5929 in 1981. The Legislature, in 1990, by definition, took transfer between adjacent parcels outside of the Subdivision Control Act, thereby undoing part of OAG 5929. [Repealed MCLA 560.102(d).] No Attorney General opinions were issued after the change of the Subdivision Control Act relative to this point.

adjacent parcels where "splits" or divisions. Prior to amendment in 1990, Section 102 of the Subdivision Control Act of 1967 clearly covered all divisions -- even if the property was transferred to an adjacent parcel. Thus, OAG 5929 correctly concluded – at that time - that a parcel, transferred to an adjacent parcel, was in fact a split. In 1990, the Subdivision Control Act was amended. The following language was added to Section 102(d) of the Subdivision Control Act:

> "Subdividing or "subdivision" does not include a property transfer between two or more adjacent parcels, if the property taken from one parcel is added to an adjacent parcel; ..."[5]

This change took care of the inconsistencies which the Attorney General pointed out existed in the old Subdivision Control Act. Without acknowledging the legal import of its statement, the Trial Court did draw an appropriate conclusion when it said:

> "... Today, Section 102(d) and (e) of the LDA clearly establishes that such a transfer is an exempt split, and it does not count against the number of divisions available to the parent parcel."[6]

However, in the very next paragraph, the Trial Court made a statement which is not supported by the LDA:

> "... Instead, the creation of an exempt split (e.g., transfers between adjacent parcels) merely **results in a division** that

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[5] It is important for this Court to note that the added language occurred in 1990 as a modification to the Subdivision Control Act which neutralized OAG 5929. It occurred well prior to the enactment of the LDA. For that reason, no further revisions of the LDA were necessary.

[6] On Page 2 of its Opinion, the Trial Court indicated that all parties agree that the transfer of land between two parcels is an "exempt split." (Opinion Page 2, Paragraph 3). This is not correct. Appellant does not wish to split hairs, but since "exempt split" is a definitional term, it is important to point out that the Court does not recognize the difference between an "exempt split" and a transfer of property which is **not** a "division." Both "division" and "exempt split" are defined in Section 102. They are distinct legal definitions. Both definitions exclude transfers between adjacent parcels. The Trial Court was correct in determining that the Filut to Sotelo transaction did not count as a division against the Filut parcel. However, it was not because the Filut-Sotelo transaction was an "exempt split." It is possible that the Trial Court's failure to distinguish between the definitional terms is one of the reasons it has misinterpreted OAG 5929. On the other hand, the Court of Appeals appreciated this distinction.

will not be counted against the number of divisions potentially available to a parent parcel."

(Opinion Page 2, Paragraph 8) (Emphasis added).

This conclusion by the Trial Court is in conformity with the repealed 1967 Subdivision Control Act, but it is in conflict with the explicit language of LDA Section 102(d), which, by definition, says such a property transfer is not a division. The Trial Court concluded it was a division which is not counted, but the LDA specifies it is not a division at all.

On Page 3 of the Trial Court's Opinion, the Trial Court quoted language from the LDA which the Trial Court thought supported its belief that OAG 5929 continued to apply.

> "The parties' lawyers correctly assess the LDA as not being a model of clarity on this issue. However, the language of Section 108(5) of the LDA, MCL 560.108(5); suggest that the principle underlying OAG 5929 continues to apply:
>
> A parcel or tract created by an exempt split or division is not a new parent parcel or parent tract and may be further partitioned or split without being subject to the platting requirements of this act if all of the following requirements are met:
>
> (a) Not less than 10 years have elapsed since the parcel or tract was recorded.
>
> (b) The partitioning or splitting results in not more than the following number of parcels whichever is less:
>
> *
>
> *
>
> *
>
> (c) The partitioning or splitting satisfies the requirements of section 109."

The difficulty with the Trial Court's Opinion is that Section 108(5) has no applicability to the facts of this case by definition. On the other hand, the Court of Appeals correctly realized this distinction and found Section 108(5) "to be wholly inapposite to this case." (Slip. Op. p. 4). Subsection 108(5) makes reference to two classes of property:

1. a parcel or tract created by an exempt split, or

2. a division.

Neither of these refers to a transfer between properties. As previously indicated, a "division" is defined by Section 102(d). The definition excludes this transaction from the definition of a division. The term "exempt split" is defined in Section 102(e). An exempt split is essentially a partitioning which does not result in parcels less than 40 acres in size. This definition also excludes property transferred between parcels. It is therefore clear that the rationale employed by the Trial Court is not justified by the LDA. This section only applies to exempt splits or divisions. The Filut to Sotelo transaction is neither. Rather, it was a transaction which is excluded from the definitions of the LDA. The transferred property was transferred into the adjacent parcel and become part of the adjacent parcel -- or "resulting parcel." The Sotelo parcel was its own parent parcel. It was not a new parent parcel or parent tract. It continued to carry its old identity as a parent parcel. The Legislature could hardly have been more clear with the changes it has made in the Subdivision Control Act and the LDA since the issuance of OAG 5929. As such, the Court of Appeals correctly applied the explicit definitions from the LDA in ruling that Section 108(5) did not apply to this case. Indeed, this Court has clarified that our Courts cannot substitute their own meanings for words defined in a statute:

> "A cardinal principle of statutory construction is that where the Legislature has defined a word or term in an act, a court is bound by that definition. We reiterated this precept in *Erlandson v Genesee Co. Employees Retirement Comm*, 337 Mich 195, 304, 59 N.W.2d 389 (1953) (quoting 50 Am Jur, §§ 261, 262, pp 253-254:
>
> "It is within the legislative power to define the sense in which words are employed in a statute.

"A statutory definition supersedes the commonly-accepted, dictionary, or judicial definition. Where an act passed by the Legislature embodies a definition it is binding on the courts."

Carr v General Motors Corp, 425 Mich 313 at 318, 389 NW2d 686 (1986).

The Trial Court did not follow the definition mandated by the LDA, while the Court of Appeals correctly applied the clear definitions of the LDA in ruling that the Township improperly failed to refuse the Sotelo division.

RELIEF REQUESTED

As mentioned earlier, this case is much easier than the Township would lead this Court to believe. Indeed, in a four-page opinion, the Court of Appeals unanimously and correctly ruled that the Trial Court inappropriately placed reliance on the outdated OAG 5929. The Court of Appeals rendered this opinion based upon a clear reading of the LDA, especially as aided by the strict interpretation of the statute in favor of the property owner, which compelled that the Trial Court's Opinion and Judgment be reversed. As such, the Court of Appeals correctly held that the Township should have immediately granted the three divisions requested by Sotelo. Therefore, Plaintiffs respectfully request that this Court deny the Township's Application for Leave to Appeal.

Respectfully submitted,

Dated: 4-4-03

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PROOF OF SERVICE

On the date below, the undersigned, employed in the offices of Visser & Bolhouse, sent by first-class mail a copy of the Brief in Opposition to the Township of Grant's Application for Leave to Appeal to:

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333 Bridge Street, N.W.
Grand Rapids, MI 49504-5360

I declare that the statements above are true to the best of my information, knowledge and belief.

Date: April 4, 2003

Constance L. Boukamp

VISSER & BOLHOUSE
A PROFESSIONAL CORPORATION
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GRANDVILLE STATE BANK BUILDING
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April 4, 2003

Via Federal Express

Michigan Supreme Court Clerk
Michigan Supreme Court
525 W. Ottawa, Second Floor
P.O. Box 30052
Lansing, MI 48909

Re: Jeffrey Sotelo, Susan Sotelo, Walter J. VanderWall, Individually and as Trustee and Phyllis A. VanderWall, Individually and as Trustee v Township of Grant
Supreme Court No. 123430
Court of Appeals No. 238690
Newaygo Circuit Court No. 00-18133-AW-M
Our File No. 00-534

Dear Clerk:

Please find enclosed original and eight copies of Plaintiffs' Brief in Opposition to the Township of Grant's Application for Leave to Appeal in the above case. I have also enclosed a Proof of Service of the same on the opposing attorney, Clifford H. Bloom.

Very truly yours,

Joel Baar

Joel W. Baar

JWB/clb
Enclosures
c: Clifford H. Bloom (w/enc)
Mr. & Mrs. Walter VanderWall (w/enc)
Mr. & Mrs. Jeffrey Sotelo (w/enc)